



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 121 0184]

Bosley, Inc., a corporation, and Aderans America Holdings, Inc., a corporation, and Aderans Co., Ltd., a corporation; Analysis to Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before May 8, 2013.

ADDRESSES: Interested parties may file a comment at <https://ftcpublic.commentworks.com/ftc/bosleyaderansconsent> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write "Bosley Aderans, File No. 121 0184" on your comment and file your comment online at <https://ftcpublic.commentworks.com/ftc/bosleyaderansconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington,

DC 20580.

FOR FURTHER INFORMATION CONTACT: Justin Stewart-Teitelbaum (202-326-3597), FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 8, 2013), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 8, 2013. Write "Bosley Aderans, File No. 121 0184" on your comment. Your comment " including your name and your state " will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social

Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which . . . is privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/bosleyaderansconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

¹ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

If you file your comment on paper, write "Bosley Aderans, File No. 121 0184" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 8, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from Bosley, Inc. ("Bosley"), and its corporate parents, Aderans America Holdings, Inc. ("Aderans America") and Aderans Co., Ltd. ("Aderans") (collectively, "Respondents"). Bosley is the largest manager of medical/surgical hair transplantation practices in the United States. The Commission's Complaint alleges that Bosley facilitated coordination and endangered competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by exchanging competitively sensitive, nonpublic information with HC (USA), Inc. ("Hair Club"). Bosley indicated that it exchanged similar information with other medical/surgical hair transplantation practitioners.²

² Pursuant to a Stock Purchase Agreement dated July 13, 2012, Aderans plans to acquire all of Hair Club's stock from Regis Corporation for \$163.5 million. Therefore, Hair Club is not a respondent to the Consent Agreement.

The proposed Consent Agreement would resolve competitive concerns by requiring Bosley: (1) not to communicate competitively sensitive, nonpublic information with any competitor; (2) not to request, encourage, or facilitate communication of competitively sensitive, nonpublic information from any competitor; and (3) to institute an antitrust compliance program to assure ongoing compliance with the proposed Decision and Order (“Order”) and with U.S. antitrust laws.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the proposed Order.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis does not constitute an official interpretation of the Consent Agreement or the proposed Order, nor does the analysis modify their terms in any way. Further, the Consent Agreement has been entered into for settlement purposes only, and does not constitute an admission by Respondents that they violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

I. The Complaint

The allegations of the Complaint are summarized below.

Bosley and Hair Club are managers of medical/surgical hair transplantation with nationwide geographic presence and national brand recognition. Bosley is the largest such manager in the United States. For at least four years, the chief executive officers (“CEOs”) of Bosley and Hair Club repeatedly exchanged competitively sensitive, nonpublic information

about their companies' medical/surgical hair transplantation practices. The information exchanged included details about future product offerings, surgical hair transplantation price floors and discounts, plans for expansion and contraction, and business operations and performance. At the time the CEOs exchanged the information, it was not publicly available.

Bosley considered the information exchanges to be business as usual, and as alleged in the Complaint, Bosley indicated that it had similar communications with other competitors.

II. Analysis

Competition may be unreasonably restrained whenever a competitor directly communicates, solicits, or facilitates exchange of competitively sensitive information with its rivals, particularly where such information is highly detailed, disaggregated, and forward-looking. The risks posed by such communications are three-fold. First, a discussion of competitively sensitive prices, output, or strategy may mutate into a conspiracy to restrict competition. Second, an information exchange may facilitate coordination among rivals that harms competition, even in the absence of any explicit agreement regarding future conduct. Third, knowledge of a competitor's plans reduces uncertainty and enables rivals to restrict their own competitive efforts, even in the absence of actual coordination.

According to the Commission's Complaint, by directly and repeatedly exchanging competitively sensitive, nonpublic information with Hair Club and other rivals, Bosley engaged in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. The Commission's Complaint alleges that Bosley and Hair Club exchanged information on competitively sensitive subjects, including future plans to close existing facilities and current strategies regarding price discounting. Bosley and Hair Club's alleged tacit understanding to exchange the information could facilitate coordination or endanger competition by reducing

uncertainty about a rival's product offerings, prices, and strategic plans. For example, the information exchanges could lead a competitor to determine not to open facilities or market services in a particular location. Alternatively, a competitor might avoid granting additional discounts to maintain existing price levels for surgical hair transplantation services. Any or all of these decisions could result in consumer harm in the form of reduced choice or artificially inflated transaction prices. The potential for harm increases to the extent that Bosley engaged in similar communications with additional rivals.

The Commission must weigh the potential for competitive harm from direct and repeated exchanges of competitively sensitive, nonpublic information against the prospect of legitimate efficiency benefits. The Commission's Complaint alleges that the information exchanges between Bosley and Hair Club served no legitimate business purpose. Specifically, the Commission alleges that in this instance – considering the types of information involved, the level of detail, the direct nature of the communication, and the absence of any related pro-competitive impact – the exchanges were potentially anticompetitive and lacked a legitimate business justification.

III. The Proposed Consent Order

The Consent Agreement signed by Respondents contains a proposed Order resolving the allegations in the Commission's Complaint. First among its provisions, Paragraph II. of the proposed Order enjoins Respondents from communicating competitively sensitive, nonpublic information directly to any hair transplantation competitor. Paragraph II. further prohibits Respondents from requesting, encouraging, or facilitating communication of competitively sensitive, nonpublic information from any competitor.

Paragraph II. of the proposed Order would not interfere with Respondents' ability to

compete or prevent participation in legitimate industry practices, such as ordinary trade association or medical society activity. Specifically, the proposed Order excludes from its prohibitions certain communications including: (1) where the information is reasonably necessary to achieve pro-competitive benefits related to a lawful joint venture or as part of legally supervised due diligence; (2) provision of rates to market research firms or Respondents' own vendors or independent contractors; (3) provision of rates or competitive offers to actual or prospective customers; and (4) receipt of information from competitors for the purpose of legitimate market research where the information is not knowingly conveyed to Respondents or their representatives (e.g., competitive intelligence).

In addition, Paragraph III. of the proposed Order requires Respondents to institute programs to ensure compliance with the proposed Order and U.S. antitrust laws. Paragraph III. requires: (1) annual antitrust compliance training for all Bosley officers, executives, employees, and agents whose positions entail contact with competitors or who have sales, marketing, or pricing responsibility for Respondents' management of medical/surgical hair transplantation practice; (2) the provision of legal support to respond to any questions regarding antitrust compliance or U.S. antitrust laws; and (3) document retention sufficient to record compliance with Respondents' obligations under the proposed Order.

Paragraph IV. requires Respondents to submit periodic compliance reports to the Commission. Respondents must provide an initial compliance report within sixty (60) days from the date the Order becomes final and annually thereafter for the next four (4) years or upon written notice by the Commission.

Pursuant to Paragraph V. of the proposed Order, Respondents must also provide notice to the Commission thirty (30) days prior to any planned dissolution, acquisition, or other change

that may affect compliance obligations arising from the proposed Order.

Paragraph VI. gives the Commission access, upon five (5) days written notice, to Respondents' U.S. facilities, records, and employees to ensure on-going compliance.

Paragraph VII. of the proposed Order provides that the proposed Order will expire in twenty (20) years.

By direction of the Commission, Commissioner Wright recused.

Donald S. Clark
Secretary.

[FR Doc. 2013-08692 Filed 04/11/2013 at 8:45 am; Publication Date: 04/12/2013]